IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 1177 OF 2007

Shri Mohammad Pasha Abdul Desai ... Petitioner
(Org. Plaintiff)

Versus

Smt. Dhondubai Dadu Davare & Ors. Respondents
(Org. Defendants)

Mr. P.M.Arjunwadkar for the petitioner.

Mr. S.M.Mirajkar for Respondents Nos. 1 to 5.

CORAM: S.K.SHAH,J.

DATE : 22nd March, 2007.

P.C.

1. Rule, returnable forthwith and heard finally with the consent of the parties.

2. By this Writ Petition, the petitioner herein challenges the order passed by the trial Court on 25th January, 2007 whereby the plaintiff's application seeking amendment was redcjected.

3. The suit is at the stage of arguments after the recording of evidence was complete on both sides. It is at that stage, an application was made seeking amendment of the plaint to the effect of changing date of mortgage from 29.6.1966 to 29.9.1966. The suit is for redemption

of the said mortgage.

4. The reason assigned for rejection of the application by the trial Court is that the application for amendment is made at the belated stage and that admissions are brought on record in evidence which, in the opinion of the Civil Court, cannot be disturbed by amendment. As regards the amendment of pleadings, it is needless to say that it can be allowed at any stage of the suit. What is required to be considered while considering the amendment of pleadings is whether it changes the nature of the suit or would introduce a new case. The suit is for redemption. By changing the date is not going to change the nature of the suit or it would introduce a new case meaning thereby that the suit for redemption is not going to be changed. The delay also cannot be taken as sufficient ground for rejecting the amendment.

5. Under the circumstances, the impugned order is setaside. The amendment application, Exhibit 59, is hereby allowed subject to the payment of costs of Rs.1,000/- (Rupees one thousand only) to each of the Respondents.

Writ Petition stands disposed of.

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(S.K.SHAH,J.)